

## REGULATION OF INVESTIGATORY POWERS ACT 2000 ("RIPA")

### 1 SUMMARY

- 1.1 The purpose of this report is to update Members on the use of RIPA over the past year and to allow for the review of the Council's RIPA policy, making any amendments should this be required.

### 2 INTRODUCTION

- 2.1 On 8 March 2011, Members of the Review Committee agreed to provide a strategic overview of the Council's use of RIPA powers in terms of reviewing the policy and considering quarterly and annual statistical reports on usage.
- 2.2 On 12 July 2011 the Committee agreed that in the interests of saving resources, it would consider statistics and review the Council's RIPA policy on an annual rather than quarterly basis.
- 2.3 The last report to this Committee was on 6 March 2012.
- 2.4 Members and officers received RIPA training on 12 February 2013.

### 3 ANNUAL STATISTICS ON THE COUNCIL'S USE OF RIPA POWERS

6 March 2012 – 5 March 2013

Authorisation Date	Nature of Authorisation	Expiry date / Review Date(s)/ Cancellation Date
NIL		

- 3.1 Members will note that the Council is a sparing user of RIPA powers, the last authorisation having been made on 8 February 2011, brief details of which were provided in the 12 July 2011 report to this committee.

### 4 ANNUAL POLICY REVIEW

- 4.1 The Council's RIPA policy appended to this report was updated in March 2011 and took account of various developments and changes to the law.
- 4.2 Since that time the position has changed further by virtue of the Protection of Freedoms Act 2012. Magistrates approval is now required before covert investigatory techniques are used by local authorities. The training session held in February also identified that minor adjustments are required with

respect to the officers at this Council who currently administer and authorise RIPA.

- 4.3 Work is currently in progress regarding these changes. A more detailed report and revised draft policy will be provided to this Committee on 9 July 2013.

## **5 RISK IMPLICATIONS**

- 5.1 The improper or disproportionate use of RIPA powers could lead to adverse publicity in the media and serious reputational damage.

## **6 CRIME AND DISORDER IMPLICATIONS**

- 6.1 The use of RIPA powers in an appropriate and proportionate manner can assist in the prevention and detection of crime.

## **7 LEGAL IMPLICATIONS**

- 7.1 Failure to comply with RIPA legislation may mean that covert investigatory evidence will not be accepted in court and there may be issues of privacy/human rights contraventions.

## **8 RECOMMENDATION**

- 8.1 It is proposed that the Committee **RESOLVES:-**
- to note the Council's annual usage of RIPA;
  - await a further report from officers recommending changes to the Council's RIPA policy .

Albert Bugeja

Head of Legal, Estates & Member Services

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### **Background Papers:-**

None

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If you would like this report in large print, Braille or another language please contact 01702 318111.



ROCHFORD DISTRICT COUNCIL

COVERT SURVEILLANCE POLICY AND PROCEDURE  
MANUAL

PURSUANT TO THE  
REGULATION OF INVESTIGATIVE POWERS ACT 2000

This manual has been prepared to assist officers who undertake covert surveillance but is not intended to be an exhaustive guide

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# GUIDANCE

## 1 SCOPE

- 1.1 This guidance applies to the planned deployment of Covert Surveillance or the use of Covert Human Intelligence Sources (CHIS) against specified individuals in such a manner as is likely to result in obtaining private information about the person. The following provisions relate therefore to the observation of specified individuals from a vehicle, foot surveillance, the setting up of covert observation positions, the use of equipment for the monitoring of specified individuals and the use of informants or undercover officers.

## 2 BACKGROUND

- 2.1 Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) provides a mechanism for public authorities to undertake certain investigative techniques in compliance with the Human Rights Act 1998.
- 2.2 The Home Office has issued revised Codes of Practice to provide guidance to public authorities on the use of RIPA to authorise covert surveillance that is likely to result in the obtaining of private information. The revised Codes of Practice are titled “Covert Surveillance and Property Interference” and “Covert Human Intelligence Sources”.
- 2.3 All Codes of Practice issued pursuant to section 71 of RIPA are admissible as evidence in criminal and civil proceedings. If any provision of the Codes appear to be relevant to a court or tribunal considering any such proceedings, or to the Investigatory Powers Tribunal established under RIPA, or to one of the Commissioners responsible for overseeing the powers conferred by RIPA, they must be taken into account.
- 2.4 This Procedure sets out the procedures that must be followed when the Council undertakes authorised covert surveillance and brings into effect a number of changes that have been implemented by the revised Codes. It is intended to be a best practice guide. This Manual is not intended to replace the Home Office Codes.
- 2.5 Those officers that intend to apply for an authorisation under RIPA must familiarise themselves with the appropriate Code of Practice as well as this Procedure.
- 2.6 The covert surveillance regulated by RIPA and covered by the above codes of practice is in three categories; intrusive surveillance, directed surveillance and covert human intelligence. The Act and Codes set up procedures for the authorisation of these activities. Although not unlawful to undertake covert surveillance without authorisation,

obtaining an authorisation will ensure that the action is within the law and safeguards against abuse.

- 2.7 General observations which form part of the duty of normal enforcement does not fall within the scope of the Act e.g. a shop maybe covertly observed prior to being visited. Such observation may use binoculars or cameras to merely reinforce normal surveillance. Where it does not involve systematic surveillance of an individual, this forms part of the everyday functions of law enforcement and this low-level activity is not usually regulated by RIPA.
- 2.8 The authorising officer should first satisfy themselves that the authorisation is necessary on particular grounds and that the surveillance is proportionate to what it seeks to achieve. Authorising and requesting officers should have regard to the Revised Code of Practice, paragraphs 3.3 - 3.6. This states that obtaining an authorisation will only ensure that there is a justifiable interference with an individual's Article 8 Rights if it is necessary and proportionate for these activities to take place.
- 2.9 It first requires authorising officers to believe that the authorisation is necessary in the circumstances of the particular case for the purpose of 'preventing or detecting crime or of preventing disorder'. Authorising officers should ask themselves if the evidence could be obtained in any other way? Is the surveillance operation really necessary to what the requesting officer is seeking to achieve? Should there be a less intrusive means of obtaining the information, then the authorisation should not be granted.
- 2.10 If the activities are considered necessary, the authorising officer must then satisfy himself that they are proportionate to what is sought to be achieved by carrying them out. He should consider the four elements of proportionality:
- i) balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
  - ii) explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,
  - iii) considering whether the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result, and
  - iv) evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

### **3 COVERT SURVEILLANCE**

- 3.1 Covert surveillance means surveillance, which is carried out in a manner calculated to ensure that the persons subject to the surveillance are

unaware that it is or may be taking place. There are two categories of covert surveillance defined in RIPA: intrusive surveillance and directed surveillance.

### **Intrusive Surveillance**

3.2 Covert surveillance is “intrusive surveillance” if it:-

- Is covert;
- Relates to residential premises and private vehicles; and
- Involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises or the vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises or vehicle. This is unlikely in the case of equipment such as a DAT recorder when used to assess noise nuisance but care must be taken in setting up of equipment and locating the microphone.

3.3 This form of surveillance can therefore only be carried out by the police and other law enforcement agencies. Council Officers must not carry out intrusive surveillance.

### **Directed Surveillance**

3.4 Directed surveillance, as defined in RIPA Section 26, is “directed surveillance” if it is undertaken:

- (a) For the purpose of a specific investigation or operation; and
- (b) In such a manner as is likely to result in obtaining private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) Otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this part to be sought for the carrying out of the surveillance.

3.5 Private information includes information about a person relating to his private or family life. Covert enforcement functions directed at shops or workplaces are unlikely to require authorisation unless it involves the systematic surveillance of an individual. Nor does it include surveillance carried out by way of immediate response to events that could not have been foreseen.

## **4 COVERT HUMAN INTELLIGENCE SOURCES (“CHIS”)**

- 4.1 If use of a CHIS is contemplated officers must familiarise themselves with the Code of Practice on Covert Human Intelligence Sources.
- 4.2 A CHIS is defined as a person who establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating anything that:
- (a) Covertly uses such a relationship to obtain information or to provide access to any information to another person; or
  - (b) Covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
- 4.3 A relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose. This relationship is established or maintained specifically to obtain or provide access covertly to information about private or family life of another person. It also covers those activities where the relationship itself can be construed as an infringement of a person’s private or family life.
- 4.4 A member of the public making complaints or giving unsolicited information about individuals is outside the provisions of RIPA. However, someone might become a covert source as a result of a relationship with the case officer. For example when a member of the public is asked to monitor the occupation of a premise. The normal sampling or undertaking of test purchases from shops does not come under the scope of the Act.
- 4.5 The Benefits Section may use a CHIS as part of their investigation of fraudulent claims of status or the occupation of accommodation. The Safety, Food and Licensing Unit may use a CHIS for licensing functions when undercover officers pose as members of the public and try to purchase services.

## **5 AUTHORISATIONS**

- 5.1 An authorisation for directed surveillance or the use or conduct of a CHIS, may only be authorised by the council on the following ground:

‘For the purpose of preventing or detecting crime or the prevention of disorder’.

The authorising officer must believe that:

- (a) The action is necessary on one or more grounds set out above; and



(b) The surveillance is proportionate to what it seeks to achieve.

The Authorising Officer will be responsible for considering all applications for covert surveillance and for granting or refusing authorisations as appropriate. The Authorising Officer will also be responsible for carrying out reviews and ensuring that authorisations are renewed or cancelled where necessary.

- 5.2 The minimum office, rank or position of an Authorising Officer has been designated by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. For a local authority the Authorising Officer must be the Director, Head of Service, Service Manager or equivalent.
- 5.3 The Council should also have in place a back-up system for situations where the Authorising Officer is unavailable to grant a written authorisation and the situation becomes urgent. This will enable officers to identify the person who is able to give authorisations in the Authorising Officer's absence.
- 5.4 Wherever knowledge of confidential information, such as a doctor's report, is likely to be acquired through the directed surveillance, a higher level of authorisation is needed. In the City Council, this would be the Head or Paid Service (the Chief Executive) or the person acting as Head of Paid Service in his absence.
- 5.5 A list of those officers who have been nominated as Authorising Officers is given below.
- 5.6 It is also now recommended best practice that there should be a Senior Responsible Officer (SRO) in each public authority who is responsible for :
  - The integrity of the processes in place to authorise directed surveillance
  - Compliance with RIPA and with the Codes of Practice
  - Engagement with the Commissioners and inspectors when they conduct their inspections, and
  - Where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner.
- 5.7 As the SRO for a local authority has to be a member of the corporate leadership team, the Senior Responsible Officer for this Council will be the Head of Legal, Estates & Member Services. He will also be responsible for ensuring that all authorising officers are of an appropriate standard in light of the recommendations or concerns raised in the inspection reports prepared by the Office of Surveillance Commissioners following their routine inspections.

- 5.8 The SRO will also undertake an annual audit of records and will be responsible for the day-to day quality control.
- 5.9 There is also now a requirement for elected members of the Council to review the use of RIPA and to set the policy on covert surveillance at least once a year. Therefore, the Review Committee will review this Policy every 12 months and will report to Full Council, should they be of the opinion that it is not fit for purpose or requires amendment.
- 5.10 The Review Committee will also consider the Council's use of RIPA every 3 months to ensure that it is being used consistently with the Council's Policy.
- 5.11 The Committee should not, and will not, be involved in making decisions on specific authorisations.

## **WORKING CODE OF PRACTICE**

### **6 AUTHORITY TO ISSUE**

- 6.1 Authorisations are only to be issued by those officers listed below:

Albert Bugeja (Head of Legal, Estates & Member Services) ext 3700

Nicholas Khan (Principal Solicitor) ext 3702

Following advice from the Assistant Surveillance Commissioner, the number of authorising officers has been limited as far as reasonably possible. Furthermore, the officers named above are based in the legal section which should ensure they are not too closely involved with the department requesting the authorisation.

In exceptional circumstances, where no named authorising officer is available, any Service Manager or more senior appointment is prescribed within legislation as an authorising officer. They would not however be permitted to authorise unless they have previously received relevant training.

- 6.2 Officers should not authorise their own activities except as a matter of urgency.

### **7 URGENT**

- 7.1 Authorisations must be in writing unless urgent. When given orally a written record that the authorising officer has expressly authorised the action must be made in the case officers note book or case notes as soon as is reasonably practicable. This must be endorsed by the authorising officer and followed within seventy-two hours with a written

authorisation as necessary. It will be rare that an authorisation would be given orally.

## **8 INFORMATION PROVIDED**

- 8.1 Any application for permission to conduct a covert operation must be in writing on the appropriate form. The forms listed below are standard forms for use by all public authorities that are listed in Schedule 1 of RIPA. The forms are an indication of the information required before an authorisation can be granted and are consistent with the requirements in the codes of practice. The Home Office recommends that all users of the form should add any information that is relevant to their organisation but avoid taking any information out of the forms.
- 8.2 Forms for the application, review, renewal or cancellation of authorisations are available in the Council's (G), shared, RIPA file.

### **Directed Surveillance**

- DIRECT1 – Authorisation Directed Surveillance
- DIRECT2 – Review of a Directed Surveillance Authorisation
- DIRECT3 – Renewal of a Directed Surveillance Authorisation
- DIRECT4 – Cancellation of a Directed Surveillance Authorisation

### **Covert Human Intelligence Source**

- CHIS1 – Application for Authorisation for the use or conduct of a Covert Human Intelligence Source
  - CHIS2 – Review of a Covert Human Intelligence Source Authorisation
  - CHIS3 – Application for Renewal of a Covert Human Intelligence Source Authorisation
  - CHIS4 – Cancellation of a Covert Human Intelligence Source Authorisation
- 8.3 A written application for authorisation must record:
- (a) The action to be authorised, including any premises or vehicles involved
  - (b) The identities, where known, of those to be the subject of surveillance;
  - (c) A full account of the investigation or operation;
  - (d) The grounds on which authorisation is sought (i.e. for the detection of crime or the protection of public health)
  - (e) How and why the investigation is both necessary and proportionate.
  - (f) Authorising Officer should state in his own words why the investigation is necessary and proportionate.

- 8.4 It is considered good practice for a simple sketch map of the immediate area of investigation, detailing specific observation points, location of monitoring equipment etc, to be appended to the application for authorisation. Further details on completing a written application for authorisation are contained in the Codes of Practice.

## **9 CONSIDERATION**

- 9.1 The investigating officer will keep notes during the initial stages of gathering intelligence. Such records will be held on the case file.
- 9.2 Requests to the authorising officer for authorisation to mount a covert operation will be subject to and based on, the intelligence gathered and recorded on the investigator's notes. The officer will consider if such an operation would assist to prevent, deter and secure evidence to bring offenders to court.
- 9.3 Responsibility for authorisation for a covert operation will be considered on the grounds that any operation is likely to be of value in connection with;
- ‘The prevention or detecting of crime or the prevention of disorder’.
- and that the proposed covert operation is a reasonable means of achieving the desired result. This must be balanced with the individual's rights under the Human Rights Act 1998.
- 9.4 Any authorisation must be on the basis that the activity is both necessary and proportionate. The Authorising Officer must also take into consideration the risk of intrusion into the privacy of persons other than those directly implicated in the operation or investigation (collateral intrusion)
- 9.5 Additional considerations with respect to the use of a CHIS are:
- their likely value as a source of information
  - assessment of any risks to them
  - the use of vulnerable individuals
  - juvenile sources i.e. under 18 years
- 9.6 For further guidance on these issues please see the Home Office code of practice on the use of Covert Human Intelligence Source.
- 9.7 If in doubt, ask the Senior Responsible Officer, Head of Legal, Estates and Member Services BEFORE any directed surveillance and/or CHIS is authorised, rejected, renewed or cancelled.

## **10 DURATION OF AUTHORISATIONS**

- 10.1 Authorisations for directed surveillance will cease to have effect three months from the day of issue and for the use of covert human intelligence sources, twelve months. The expiry date and time on the authorisation form will therefore always be three/twelve months from the date of authorisation, controlled by review and cancellation. Authorisations should be reviewed on a regular basis, using the appropriate form, to ensure that they are still necessary and proportionate.
- 10.2 Authorisations can be renewed prior to their expiry providing the criteria in paragraph 5.1 is met. Applications for renewal must be in writing and the application and the decision, detailing the grounds for the renewal or refusal to renew or withdrawal of the authorisation.
- 10.3 When the case is closed prior to the authorisation expiring or covert surveillance is no longer required or meets the criteria for authorisation, which ever is the sooner, the authorisation must be cancelled by the authorising officer using the appropriate form.

## **11. CENTRAL RECORD OF ALL AUTHORISATIONS**

- 11.1 The Senior Responsible Officer, Head of Legal, Estates and Member Services will maintain a central record of all authorisations granted, renewed or cancelled by the council. These records to be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners, upon request.
- 11.2 Within one week of the relevant date, a copy of the application, review, renewal and cancellation form is to be placed in the RIPA Records File kept secure by the Secretary/Personal Assistant to the Head of Legal, Estates & Member Services.
- 11.3 Subject to paragraph 11.5 below, all records shall be retained for a minimum of three years to ensure that they are available for inspection by the Commissioner. Where there is a belief that the material relating to an investigation could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with the Criminal Procedure and Investigations Act 1996 and kept a period of at least five years.

## **12 CONFIDENTIAL INFORMATION**

- 12.1 There are no special provisions under RIPA for the protection of “confidential information”. Nevertheless, special care needs to be taken where the subject of the investigation or operation might reasonably expect a high degree of privacy or where confidential information is involved.

- 12.2 Confidential Information can include matters that are subject to legal privilege, confidential personal information or confidential journalistic material.
- 12.3 In practice, it is likely that most of the surveillance authorised and carried out by the Council would not involve confidential information. However, where there is a possibility that the use of surveillance will enable knowledge of confidential information to be acquired e.g. conversations between a doctor and patient, a higher level of authority for such surveillance is required.
- 12.4 In cases where it is likely that knowledge of confidential information will be acquired, the use of covert surveillance is subject to a higher level of authorisation, namely by the Head of Paid Service (Chief Executive) or, in his/her absence, the Chief Officer acting as Head of Paid Service.
- 12.5 The Applicant should complete the application for authorisation of directed surveillance in the usual way, but with sufficient indication of the likelihood that confidential information will be acquired.
- 12.6 At all times during any operation officers are to conduct themselves in a manner that will not breach
- The Human Rights Act 1998
  - Regulation of Investigatory Powers Act 2000
  - Data Protection Act 1998
  - The Council's Enforcement Concordat
  - This Guidance & Working Code of Practice
  - Any code of practice issued by the Home Office

### **13 COMPLAINTS**

- 13.1 There is provision under RIPA for the establishment of an independent Tribunal. This Tribunal will be made up of senior members of the legal profession or judiciary and will be independent of the Government.
- 13.2 The Tribunal has full powers to investigate and decide upon complaints made to them within its jurisdiction, including complaints made by a person who is aggrieved by any conduct to which Part II of RIPA applies, where he believes such conduct to have taken place in "challengeable circumstances" or to have been carried out by or on behalf of any of the intelligence services.
- 13.3 Conduct takes place in "challengeable circumstances" if it takes place:
- (i) with the authority or purported authority of an authorisation under Part II of the Act; or

- (ii) the circumstances are such that it would not have been appropriate for the conduct to take place without authority; or at least without proper consideration having been given to whether such authority should be sought.

13.4 Further information on the exercise of the Tribunal's functions and details of the relevant complaints procedure can be obtained from:

Investigatory Powers Tribunal

PO Box 33220

London

SW1H 9ZQ

020 7273 4514

13.5 Notwithstanding the above, members of the public will still be able to avail themselves of the Council's internal complaints procedure, where appropriate, which ultimately comes to the attention of the Local Government Ombudsman.

## **14 THE OFFICE OF SURVEILLANCE COMMISSIONERS**

14.1 The Act also provides for the independent oversight and review of the use of the powers contained within Part II of RIPA, by a duly appointed Chief Surveillance Commissioner.

14.2 The Office for Surveillance Commissioners (OSC) was established to oversee covert surveillance carried out by public authorities and within this Office an Inspectorate has been formed, to assist the Chief Surveillance Commissioner in the discharge of his review responsibilities.

14.3 One of the duties of the OSC is to carry out planned inspections of those public authorities who carry out surveillance as specified in RIPA, to ensure compliance with the statutory authorisation procedures. At these inspections, policies and procedures in relation to directed surveillance and CHIS operations will be examined and there will be some random sampling of selected operations. The central record of authorisations will also be inspected. Chief Officers will be given at least two weeks notice of any such planned inspection.

14.4 An inspection report will be presented to the Chief Officer, which should highlight any significant issues, draw conclusions and make appropriate recommendations. The aim of inspections is to be helpful rather than to measure or assess operational performance.

14.5 In addition to routine inspections, spot checks may be carried out from time to time.

14.6 There is a duty on every person who uses the powers provided by Part II of RIPA, which governs the use of covert surveillance or covert human intelligence sources, to disclose or provide to the Chief Commissioner (or his duly appointed Inspectors) all such documents and information that he may require for the purposes of enabling him to carry out his functions.

#### IMPORTANT NOTE

This Procedure Manual has been produced as a guide only and is primarily based on the revised Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources published by the Home Office. These Codes can be found at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).

For further information please contact Legal Services:

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